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Committee on Economic, Social and Cultural Rights

Sixty-third session

Summary record (partial)* of the 23rd meeting**
Held at the Palais des Nations, Geneva, on Tuesday, 27 March 2018, at 10 a.m.

Chair: Ms. Bras Gomes

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* No summary record was prepared for the rest of the meeting.
** No summary records were issued for the 20th to 22nd meetings.

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The meeting was called to order at 10.05 a.m.

Miscellaneous matters

Informal meeting with States

1. **The Chair** said that she welcomed the opportunity to brief States parties on the Committee's work and to share information on the success it had achieved and the challenges it faced in fulfilling its mandate.

2. Promising results had been achieved with non-reporting States parties. The Committee had contacted them through United Nations Country Teams and permanent missions in Geneva with a view to identifying why, despite the Treaty Body Capacity-Building Programme, they were still taking so long to submit their reports. As a result, three overdue State party reports, from Bangladesh, Central African Republic and the Niger, had been discussed at the current session and two more, from Cabo Verde and Mali, would be discussed at the following session. She hoped that other States parties that were not fully compliant with their reporting obligations would respond to the Committee's appeal. She understood that the delay was generally due to the existence of other priorities or to a lack of the requisite coordination between ministries. Submission of periodic reports within the applicable deadline would greatly simplify the Committee's programming process.

3. During the current session, dialogues had been conducted for the first time under the simplified reporting procedure with two States parties, New Zealand and Spain. The Committee considered that the possibility should now be offered to all States parties that had already submitted two reports, so that particularly relevant issues could be identified.

4. Work was proceeding on three general comments: one on the right of everyone to enjoy the benefits of scientific progress and its applications; one on land and economic, social and cultural rights; and one on sustainable development and economic, social and cultural rights. An informal seminar had been held with stakeholders on 24 March 2018 concerning mutual reinforcement of the Sustainable Development Goals and economic, social and cultural rights.

5. The Committee had been greatly disappointed with General Assembly resolution 72/261 concerning the proposed programme budget for the biennium 2018–2019. It had hoped that Member States would adhere to the principles enshrined in General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, but cuts in the budget had forced the Office of the United Nations High Commissioner for Human Rights to scale down its activities. For example, general discussion days on general comments could now be held only once every two years. As no additional resources had been provided for implementation of the Optional Protocol, the Working Group on Communications was required to meet before or after Committee meetings during the session.

6. **Mr. Uprimny** (Chair-Coordinator of the Working Group on Communications) said that the Optional Protocol to the Covenant on individual communications had entered into force in 2013. A total of 26 communications had been registered to date. Others had not been registered because the States concerned had not ratified the Optional Protocol. The Committee had dealt with 17 communications. Substantive decisions had been taken in four cases, 12 communications had been found inadmissible and 1 communication had been withdrawn by the complainant.

7. Key normative aspects of the Optional Protocol had thus been clarified. With regard to admissibility, the Committee had highlighted the need to exhaust domestic remedies, to substantiate the complaint and to ensure that it had not been examined by another procedure of international investigation or settlement. It had also clarified the rule of *ratione temporis*. Thus, a communication should be declared inadmissible if the facts had occurred prior to the State party's ratification of the Optional Protocol. The Committee had determined the scope of its competence, deciding that it was not authorized to rule on national courts' interpretation of evidence or domestic legislation. Its mandate consisted in establishing whether a violation of the Covenant had occurred. In addition, the Committee had clarified the extent of the right to housing and its relationship to justiciability and due process. With

regard to the right to social security and pensions, the Committee had decided that States parties should adopt clear regulations aimed at satisfying legitimate expectations.

8. **Mr. Michel Blin** (Mexico) said that his country had engaged in a useful interactive dialogue with the Committee during the current session. He appreciated the fact that the dialogue had been deferred for a few months owing to the impact of the earthquake that had occurred in his country in September 2017. Mexico was committed to ensuring that all its citizens fully enjoyed Covenant rights. Significant progress had been made in a variety of areas but many challenges remained. The Committee's forthcoming recommendations would greatly assist the Government in addressing those challenges. He wished to know how the Committee planned to promote compliance with its general comment No. 24 on State obligations under the Covenant in the context of business activities.

9. **Ms. Costa** (Uruguay) said that her country had submitted its fifth periodic report (E/C.12/URY/5) to the Committee in 2016, addressing a whole range of issues. Given the number of reports to be submitted to treaty bodies, the simplified and more focused procedure for preparing reports was a major advance. Uruguay supported the Committee's plan to invite all States parties to opt for the procedure, which also facilitated communication with national institutions.

10. **Mr. Tsevens** (Belgium), noting that the Committee had registered a total of 26 individual communications, asked whether the number had increased in recent months or years, indicating that awareness of the Optional Protocol among the general public had increased. As Belgium had sent a note verbale stating that it wished to benefit from the simplified reporting procedure, he would be interested to know when the Committee planned to invite additional States parties to opt for the procedure.

11. **Ms. Arshad** (Pakistan) said that all human rights were interrelated and interdependent. As States parties reported on similar issues to different treaty bodies, the recommendations they received from those bodies also overlapped. She invited the Committee to comment on the resulting constraints on time and resources. Pakistan had been overburdened the previous year, since it had been scheduled to report to four different treaty bodies. As far fewer reports were scheduled for other years, she suggested that the treaty bodies should consider coordinating their schedules.

12. **The Chair** said that the Committee drew attention to general comment No. 24 on obligations in the context of business activities, whenever relevant, in its concluding observations. She agreed that the simplified reporting procedure was conducive to greater focus in the dialogue and the concluding observations. However, it was also essential to strike a balance between the general situation with respect to economic, social and cultural rights in a State party and specific issues. Furthermore, if a serious issue occurred that was unrelated to the content of the list of issues, it would be raised during the dialogue. As the next periodic report of Belgium was due on 30 November 2018, the Committee was unable to propose the simplified reporting procedure to the State party until the following report.

13. The treaty bodies' concluding observations overlapped because they were all seeking to promote compliance with their respective treaties. The Committee had held a joint opening meeting with the Human Rights Committee to mark the seventieth anniversary of the Universal Declaration of Human Rights. The two treaty bodies had also been endeavouring for some time to improve cooperation in reviewing State party reports in order to reduce duplication and alleviate the reporting burden. She therefore supported the proposal for a coordinated and comprehensive reporting calendar.

14. **Mr. De Schutter** said that general comment No. 24 on State party obligations in the context of business activities had been adopted in June 2017 because of the need to clarify Covenant requirements in an area that was being widely discussed in other forums, creating confusion about good practices and legal obligations. The Human Rights Council had adopted the Guiding Principles on Business and Human Rights in June 2011 and an open-ended intergovernmental working group had been established in June 2014 to develop a legally binding instrument on the subject. Three sessions of the working group had been held to date and work had begun on ways and means of enforcing decent work in global supply chains at the 105th session of the International Labour Conference in June 2016. Against that background, the Committee felt that it was necessary to clarify the minimum

requirements of the Covenant. It had also observed growing tension between the protection of investors' rights under bilateral and multilateral investment treaties and human rights obligations.

15. The case of *Philip Morris v. Uruguay* was an example of that trend. The Philip Morris International company, which had its headquarters in Switzerland, had invoked a bilateral investment treaty between Uruguay and Switzerland to sue Uruguay on the ground of its anti-smoking legislation. The International Centre for Settlement of Investment Disputes (ICSID) had ruled in favour of Uruguay in July 2016. A second case was that of *Urbaser and CABB v. Argentina*, in which Argentina had been sued by a company involved in distributing water in Buenos Aires. Argentina had invoked its duty to protect the right to water of its population. ICSID had not dismissed the idea that investors could be required to comply with human rights obligations as a condition for invoking investors' rights. However, the right to water was not deemed to be sufficiently concrete or detailed to impose obligations on the investor. The Committee now frequently referred to general comment No. 24 when confronted with issues relating to disputes between investors and States parties.

16. **Mr. Kedzia** said that the Committee had begun addressing the issue of the impact of business on economic, social and cultural rights in the early 1990s and the process had intensified over the past 15 years. States parties frequently raised increasingly complicated issues in their reports and during the interactive dialogue. The Guiding Principles were extremely important but they focused on a different dimension of the issue. The Committee referred in its general comments and concluding observations to a plethora of State party obligations to be addressed in connection with the relationship between business and economic, social and cultural rights. General comment No. 24 was a useful tool in that context and the Committee's views on State party obligations vis-à-vis business activities would doubtless be further developed, for instance when relevant cases arose under the Optional Protocol.

17. **Mr. Uprimny** said that the number of communications under the Optional Protocol on which the Committee had issued a decision had increased slightly, from three in 2015 to six in 2017. The number of registered communications had risen from three in 2014 to eight in 2016 but had then fallen to four in 2017. The number of ratifications of the Optional Protocol, which currently stood at 23, had also increased only slightly in recent years.

18. **Mr. Abdel-Moneim** said that, although the recommendations made by different committees might sometimes overlap, the work of one committee should not overlap entirely with that of another, and any problems created by such partial overlapping could easily be overcome by either the committees or the States parties. It was necessary to draw a distinction between overlapping issues and repeated recommendations, which indicated the existence of a problem that needed to be tackled. The number of rights addressed in international treaties and the number of stakeholders involved were both increasing. The concepts underlying the rights enshrined in the treaties were more sophisticated than they had been when the treaties had been adopted, and more sophisticated machinery was required to monitor their implementation.

19. **Mr. Chen** said that the relationship between the Committee and the States parties was a constructive and cooperative partnership. The 18 members of the Committee were selected by the States parties through the Economic and Social Council. The members' mandate was to review the periodic reports submitted by States parties in a manner intended to enhance unity and cooperation. The Committee members were not judges and did not wish to impose impossible tasks and burdens on States parties. In order to support the work of the Committee, communication and cooperation between the Committee and the States parties should be enhanced. To that end, the Committee would welcome suggestions, comments and even criticisms from States parties on the efficacy of the interactive dialogues, the appropriateness or otherwise of the concluding observations and the merits of the general comments.

20. **The Chair** said that the channels of communication between the States parties, the Secretary and the Committee were permanently open. The dialogue between the Committee and the States parties was ongoing and did not end at any particular point; they were all

working towards a common goal, which was to enhance the protection of citizens' economic, social and cultural rights. The Committee had recently established a new procedure for follow-up to concluding observations, in accordance with which States parties were required to submit their first follow-up reports by the end of 2018. Both the country rapporteurs and the specially mandated Rapporteur on follow-up to concluding observations were available to engage in dialogue with States parties about that process.

21. **Mr. Abashidze** said that, although all human rights were inseparable and universal, particular emphasis was currently being placed on social and economic rights. Given that all States were interested in surmounting social and economic development problems, the role played by the Committee would continue to grow.

22. The treaty bodies were valuable, as the experts who sat on them were truly independent. Therefore, it was necessary for States parties to become more involved in strengthening the treaty body system and assessing the measures taken to achieve that goal. Although the various committees faced many problems in their work, they had done much, for instance, in overcoming delays and in dealing with individual communications; they had issued general comments on highly complex issues; they had also taken steps to coordinate their efforts and improve their working procedures. In view of the importance of the work carried out by the committees, the States parties should ensure that they remained properly funded.

23. **Ms. Shin** said that there was a regional imbalance in the number of States that had ratified the Optional Protocol. European and Latin American countries were well represented among the 23 States parties to the Optional Protocol but countries in Africa and the Asian-Pacific region were underrepresented. The Committee encouraged all States interested in protecting economic, cultural and social rights to ratify the Optional Protocol.

24. **The Chair** said that the act of ratifying the Optional Protocol sent out an important message at a regional as well as a national level. Any States that had concerns about the approach that the Committee would take to the consideration of communications now had sufficient evidence to establish that it was fair and balanced.

25. **Mr. Sadi** said that there was a general misunderstanding of the way that economic, social and cultural rights should be implemented. The provision that such rights should be progressively realized was taken by some States parties as an invitation to wait until they were sufficiently wealthy before they began to meet their obligations. Under the Covenant, however, States parties were required to demonstrate that they had begun the process of meeting their obligations by devoting the maximum available resources to the realization of the rights enshrined in it. Although all human rights were interrelated, no rights in any particular area could be implemented without a solid foundation of economic, social and cultural rights.

26. **Mr. Salama** (Office of the High Commissioner for Human Rights) said that it was important to stress the ongoing nature of the dialogue between the Committee and the States parties. Although General Assembly resolution 68/268 was a landmark resolution, it was never meant to provide a definitive answer to all existing problems. Rather, it was intended to usher in a number of new procedures, including the simplified reporting procedure.

27. The decision taken by the Fifth Committee on the funding of the treaty bodies was a disappointing one. Under current conditions, the Office of the High Commissioner for Human Rights would not be able to continue providing the necessary level of support to the Committee. The treaty bodies were essential, as the experts who sat on them were independent. For that reason, States parties should prioritize them when deciding how to allocate their funds. The treaty body system was currently at risk and only States parties were in a position to be able to save it.

The discussion covered in the summary record ended at 11.20 a.m.